

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6079 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JABBARKHAN AZADKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/99

ORAL JUDGEMENT

#. The petitioner Jabbarkhan Azadkhan Pathan came to be detained by Police Commissioner, Ahmedabad City vide his order dated 18th July, 1998 produced on record vide Annexure-A. The petitioner was detained under powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act (for short 'PASA') on the ground that his activities were prejudicial to the public order.

#. The detaining authority in reasons for detention has stated that one offence under Bombay Prohibition Act was registered against the detenu. Two incidents dated 26th June, 1998 and 3rd July, 1998 are also recorded to indicate that the petitioner used physical force with the help of his accomplice to pursue his activities of bootlegging and thereby disturbed public order. The detaining authority has kept the names of the witnesses secret as per protection provided under Section 9(2) of the PASA Act.

#. Ms. Kachhavah, learned advocate appearing for the petitioner submitted that the detention is bad in law. The activities of the petitioner as alleged in the grounds of detention are not such as can be considered as prejudicial to the public order but at the most it would be a question of disturbance of law and order. She has also raised contention that the representation made on behalf of the petitioner by his advocate has been turned down, without being considered by the authorities concerned. She therefore urged that the order of detention may be quashed and set aside.

#. Mr.N.D.Gohil, learned AGP appearing for the respondent authorities has opposed this petition. He has filed affidavit on the detaining authority. He submitted that the petitioner was earlier externed and while the externment order was in subsistence, he continued his anti social activities and for that purpose an offence has been registered against him for breach of externment order.

#. Taking an overall view of the matter and considering the decision of the Hon'ble Apex Court in the case of PIYUSH KANTILAL MEHTA VS. COMMISSIONER OF POLICE, AIR 1989 S.C. 491 and the decision of this court in case of AMRATLAL VAGHARI VS. COMMISSIONER OF POLICE, 1995-2 GLH 874, it is amply clear that the reasons recorded for detention do not indicate any material to justify the subjective satisfaction about the disturbance caused to the public order by the petitioner. Only one offence under the Bombay Prohibition Act is registered for which, he has been booked. The last two incidents are stray and don't indicate any material to show that a public at large was disturbed because of the activities of the petitioner. There is nothing either to show that the activities are such as are likely to lead to a serious disturbance in public order. Under these circumstances, it cannot be said that the activities of the petitioner are as such that caused panic in public or has disturbed

even tempo of public order.

#. It may be noted that the ground is taken by the respondent that the petitioner was externed and while his externment order was in subsistence, he is involved in anti social activities but for that he has already been booked.

#. It is also required to be considered that the representation made on behalf of the petitioner has not been considered by the authorities on the simple ground that it has not been signed by the detenu, although it was sent through an advocate. The authority is expected to take a technical approach in such matters. (BHALCHAND VS. UNION OF INDIA, AIR 1978 SC 297).

#. In light of the facts of the present case, the order of detention cannot be upheld and therefore, the petition deserves to be allowed and is allowed accordingly. The detention order dated 18th July, 1998 is hereby quashed and set aside. The petitioner detenu be set free from detention forthwith if he is not required in any other criminal case or proceedings. The rule is made absolute accordingly. It is stated that detenu is transferred to Rajkot prison and therefore the writ shall go to Jail Authority, Rajkot.

Date : 18-2-1999 (A.L.Dave, J.)

*kailash